March 30, 2006

Robert Schneider, Chairman
State Water Resources Control Board
Central Valley Region
11020 Sun Center Drive, No. 200
Rancho Cordova, CA 95670

Dear Chairman Schneider:

SUBJECT: Development of a Delta Mercury TMDL

In anticipation of the Central Valley Regional Water Quality Control Board's (Board) soon to be released Draft Basin Plan Amendment establishing a Total Maximum Daily Load (TMDL) standard for mercury in the Delta, the Delta Mercury TMDL Collaborative (Collaborative) facilitated by the Delta Protection Commission (Commission), consistent with the Delta Protection Act and the Land Use and Resource Management Plan for the Primary Zone of the Delta (Management Plan), is taking this opportunity to reiterate comments expressed in response to the August 2005 Board staff report.

As presented at the Board hearing on November 28, 2005, and in the November 18, 2005 letter (attached), the Collaborative was formed to provide Board staff with a coordinated Delta-wide perspective and input for the development of an "effective" TMDL program for the Delta region. Thus, the Collaborative will continue to review documentation, participate in public workshops, and provide constructive feedback to the Board and its staff throughout the TMDL development process. As noted in the previous comments, the Collaborative strongly encourages the development of the TMDL program and the timing of its implementation take into consideration the Management Plan and the anticipated beneficial outcomes of the various Delta visioning processes and activities currently underway.

For example, the August 2005 Regional Board staff report recommends a more than 70% reduction in average aqueous methylmercury levels from the Yolo Bypass and Mokelumne River subregions of the Delta, and a policy of "no net increase" in annual mercury loads from Delta wetland areas in general. As these areas have been priority sites in which the CALFED Bay-Delta Program has invested millions of dollars in State and federal ecosystem restoration funds over the past ten years, the proposed standard could effectively halt all habitat enhancement activities in these high-priority areas. Therefore, the Collaborative questions whether there is sufficient data to justify such a potential environmentally detrimental imposition.

Additionally, the staff report concedes that even if it could be shown that wetland habitat restoration causes a certain level of mercury load in the Delta that should be mitigated, no effective BMPs to achieve acceptable levels are known at this time. Since CALFED's Science Program has formally made the problem of methylmercury a priority, through the funding of various studies to gather needed data on the issue, the Collaborative suggests that it may be premature to impose a standard on these habitat areas until the studies underway begin yielding sufficient data for consideration by Board staff.

As another example, dredging of Delta channels is a key component of regional levee maintenance, conveyance of drinking water, and floodwater management. The proposed extensive testing of sediments, and the possible requirement that sediments containing a certain level of mercury not be placed within the 100-year floodplain, could have significant implications

for this important activity in the Delta. As a majority of the Delta lies within the 100-year floodplain, such materials would have to be transported out of the area, raising the cost of dredging so high as to be economically infeasible. If levee and channel maintenance cannot be attained through dredging due to the high cost of transport, the negative implications for the State's drinking water supply and flood control system potentially could be significant. As the process of dredging would involve the physical removal of possibly high levels of mercury-contaminated sediment out of the water where it would methylize and bioaccumulate in the biota, the Collaborative suggests that there are possible benefits to dredging in the Delta that should be further explored.

In review of the proposed TMDL, the Collaborative is taking into consideration how the proposed program could potentially impact activities and projects currently underway in the Delta region. Such activities and projects include: habitat-friendly levee protection and stabilization; reversal of land subsidence; State and local wildlife habitat enhancement such as Department of Fish and Game restoration activities and County Habitat Conservation Programs; dredging and dredge material reuse; invasive weed control; agricultural practices; and land- and water-based recreation activities. The Collaborative assumes that in addition to CEQA requirements, and in light of the potential benefits yielded by these other activities, the development of the TMDL will include cost/benefit comparisons, establishment of parameters for prioritization of mercury remediation actions, analysis of the "no net increase" policy, and development of recovery plan priorities.

The Collaborative appreciates your consideration of the comments provided herein, and looks forward to continuing to provide meaningful input to the Board for the development of an effective program to address the issue of mercury in the Delta. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions relative to the information provided.

Sincerely,

Linda Fiack, Executive Director
Delta Protection Commission
On behalf of the Delta Mercury TMDL Collaborative

Attachment

cc: Chair, Yolo County Board of Supervisors
Chair, Sacramento County Board of Supervisors
Chair, Contra Costa County Board of Supervisors
Chair, Solano County Board of Supervisors
Chair, San Joaquin County Board of Supervisors
Collaborative Participants